

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

IN THE MATTER OF
THE COMPLAINT OF
ETERNITY SHIPPING, LTD. AND
EUROCARRIERS, S.A.
FOR EXONERATION FROM OR
LIMITATION OF LIABILITY

*

*

Civil Action No.: L01CV0250

*

*

* * * * *

**CLAIMANT-JOSEFINA GONZALES' REPLY TO LIMITATION PLAINTIFFS' R
ESPONSE TO CLAIMANT'S MEMORANDUM REGARDING "P.O.E.A. CONTRACT"
ISSUES**

NOW COMES Claimant-Josefina Gonzales ("Claimant"), appearing by and through her attorneys-of-record, R. Blake Brunkenhoefer of Brunkenhoefer & Nielsen, P.C. and W. Charles Bailey, Jr. of Simms Showers, L.L.P., and makes and files this her "Reply to Limitation Plaintiffs' Response to Claimant's Memorandum Regarding 'P.O.E.A.' Contract Issues."¹

**I.
PROCEDURAL BACKGROUND**

Following the Court's November 21, 2005 hearing of Limitation Plaintiff's Motion for Summary Judgment, the Court issued a November 22, 2005 Memorandum Order directing Claimant to address certain issues. In response thereto, on December 5, 2005, Claimant filed copies of the Filipino law referenced in her "timeline"; Limitation Plaintiffs filed a joint letter accurately describing Claimant's denial of the applicability of the version of the "Standard Terms & Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" (hereinafter,

¹ In the interest of economy and efficiency, Claimant respectfully requests the Court take notice of the existence and contents of its file, such that it will not be necessary to reproduce previously-filed materials as attachments hereto. *Fed. R. Evid. 201*.

“Standard Terms & Conditions”) filed by Limitation Plaintiffs; and, Claimant filed a “Memorandum” concerning the Court’s resolution of “limitation actions.”

In response to this Court’s November 21, 2005 and December 8, 2005 Memorandum Orders, Claimant filed her “Memorandum Regarding ‘P.O.E.A. Contract’ Issues,” to which Limitation Plaintiffs filed their “Response to Claimant-Gonzales’ Memorandum Regarding ‘P.O.E.A. Contract’ Issues.”

Claimant files this “Reply,” supplementing her original “Memorandum Regarding ‘P.O.E.A. Contract’ Issues” to address certain arguments made in Limitation Plaintiffs’ “Response.”²

II. REPLY

Claimant has attached the affidavit of her experienced and knowledgeable Filipino counsel (Von Lovel D. Bedona) as “Exhibit 1” hereto. In addition to making other points, all of which are incorporated by reference, said document establishes that:

1. At the time Juan Gonzales (i.e., the “deceased”) executed the governing contract with Limitation Plaintiffs, at the time the deceased was killed, and at present, the National Labor Relations Counsel of the Philippines (“NLRC”) did not and does not have the authority to adjudicate tort claims such as those raised herein. Tort cases in the Philippines were and are heard by the “regular courts” of the country, not the NLRC.
2. Foreign courts often adjudicate tort cases for the benefit of seafarers otherwise covered by the “POEA contract,” especially where the tort occurs outside the Philippines.
3. The inclusion of Section 20(G) into the “Standard Terms and Conditions” was a

² In accordance with the Local Rules of the Court, Claimant submits this Reply more than three (3) days prior to the scheduled hearing of the matters addressed hereby.

statement of new law and was not, in fact, merely a restatement of existing Filipino law.

III.
PRAYER

WHEREFORE, Claimant-Gonzales respectfully requests that the Court deny the relief requested by Limitation Plaintiffs herein, and in all respects deny summary judgment.

Respectfully submitted,

/s/

R. Blake Brunkenhoefer (S.D.Tex. #15559)*
BRUNKENHOEFER & ASSOCIATES, P.C.
1770 Tower II
555 N. Carancahua
Corpus Christi, Texas 78478
(361) 888-6655
Fax (361) 888-5855
bbrunk@gulfattorneys.com
(* Admitted Pro Hac Vice)

/s/

W. Charles Bailey, Jr. (#23580)
SIMMS SHOWERS, LLP
Suite 702
20 South Charles Street
Baltimore, Maryland 21201
(410) 783-5795
Fax (410) 783-1368
wcbaily@simmsshowers.com

CERTIFICATE OF SERVICE

I, R. Blake Brunkenhoefer, do hereby certify that a true and correct copy of the above and foregoing document was served via e-mail notification from the District Court upon:

M. Hamilton Whitman, Jr.
OBER, KALER, GRIMES
& SHRIVER, P.C.
120 E. Baltimore Street
Baltimore, MD 21202
(VIA E-MAIL &/OR FAX)

Jeffrey J. Asperger
Erin Walz
ASPERGER CARAHER, L.L.C.
Three Illinois Center
303 East Wacker Drive, Suite 1000
Chicago, Illinois 60601
(VIA E-MAIL &/OR FAX)

Robert G. Clyne
HILL, RIVKINS & HAYDEN, L.L.P.
45 Broadway, Suite 1500
New York, NY 10006-3739
(VIA E-MAIL &/OR FAX)

Francis J. Gorman
GORMAN & WILLIAMS
Two N. Charles Street, Suite 750
Baltimore, MD 21201
(VIA E-MAIL &/OR FAX)

James D. Skeen
SKEEN & KAUFFMAN
& SKEEN, L.L.P.
800 N. Charles Street
Baltimore, MD 21201
(VIA E-MAIL &/OR FAX)

Bernard J. Sevel
ARNOLD, SEVEL & GAY, P.A.
Two N. Charles Street, Suite 560
Baltimore, MD 21201
(VIA E-MAIL &/OR FAX)

James W. Bartlett, III
SEMMES, BOWEN & SEMMES
250 W. Pratt Street, 16th Floor
Baltimore, MD 21201-2423
(VIA E-MAIL &/OR FAX)

W. Charles Bailey, Jr.
SIMMS SHOWERS, L.L.P.
20 S. Charles St., Suite 702
Baltimore, MD 21201-3291
(VIA E-MAIL &/OR FAX)

in accordance with all applicable provisions of the Federal Rules of Civil Procedure, on this the 13th day of January, 2006.

/s/
R. Blake Brunkenhoefer